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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 205**

**[Document Number AMS-NOP-11-0002; NOP-11-02]**

**National Organic Program: Notice of Policies Addressing Kelp, Seeds and Planting Stock, Livestock Feed, and Responding to Pesticide Residue Testing**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of availability of final guidance.

**SUMMARY:** The National Organic Program (NOP) is announcing the availability of three final guidance documents and one instruction document intended for use by certifying agents and certified operations. The final guidance and instruction documents are entitled as follows: “The Use of Kelp in Organic Livestock Feed (NOP 5027); Responding to Results from Pesticide Residue Testing (NOP 2613)”; “Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production (NOP 5029)”; and “Evaluating Allowed Ingredients and Sources of Vitamins and Minerals for Organic Livestock Feed (NOP 5030)”. These final guidance and instruction documents are intended to inform the public of NOP’s current thinking on these topics.

**DATES:** The final guidance documents announced by this notice of availability are effective on [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA-AMS-NOP, 1400 Independence Ave., SW., Room 2646-So., Ag Stop 0268, Washington, DC 20250, Email: [Melissa.bailey@ams.usda.gov](mailto:Melissa.bailey@ams.usda.gov); Telephone: (202) 720-3252; Fax: (202) 205-7808.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On June 13, 2011, the National Organic Program (NOP) published in the Federal Register a notice of availability with request for public comment on four draft guidance documents (76 FR 34180). The topics covered in the draft documents addressed recommendations issued by the National Organic Standards Board (NOSB) and the USDA Office of Inspector General (OIG) in a March 2010 audit report of the NOP. The four documents presented policies on the use of kelp in livestock feed products, procedures for certifying agents in response to results from pesticide residue testing, requirements for procurement and use of seed, seedlings and planting stock, and evaluation criteria for allowed ingredients and sources of vitamins and minerals in livestock feed. The four draft guidances can be viewed on the NOP website at <http://www.ams.usda.gov/NopDraftGuidance>. The 60-day comment period closed on August 12, 2011.

The NOP received approximately 50 individual comments on the four draft guidance documents. Based upon the comments received, the NOP revised and is publishing the three draft guidance documents as final: “NOP 5027 - The Use of Kelp in Organic Livestock Feed; “NOP 5029 - Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production”; and “NOP 5030 - Evaluating Allowed Ingredients and Sources of Vitamins and Minerals for Organic Livestock Feed”. Each guidance document includes an appendix where the NOP provides a complete discussion of the comments received and the rationale behind any changes made to the guidance documents as well as any changes proposed, but not made to the guidance documents.

The fourth draft guidance document, “NOP 5028 - Responding to Results from Pesticide Residue Testing,” has been revised and reissued under the same title as an instruction document,

NOP 2613. Instruction documents set forth or clarify existing NOP procedures and provide information to certifying agents about conducting business related to certification and enforcement. In contrast, guidance documents provide or explain options and alternatives to satisfy regulatory requirements, set forth changes in interpretation of policy, or address unusually complex or highly controversial issues. Upon consideration of the objectives of the content in the final document, the NOP has issued NOP 2613 as an instruction document, rather than guidance, since the purpose is to explain to certifying agents how to respond to results from pesticide residue testing. Because this was issued as a draft guidance with request for comment, this instruction includes an appendix where the NOP provides a discussion of the comments received on the draft guidance and the rationale behind any changes made in the instruction as well as any changes proposed, but not made to the instruction.

The three final guidance documents and one instruction document are now available from the NOP through “The Program Handbook: Guidance and Instructions for Certifying Agents and Certified Operations”. This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the NOP regulations. The current edition of the Program Handbook is available online at <http://www.ams.usda.gov/NopProgramHandbook>.

## II. Significance of Guidance

These final guidance documents are being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432-3440). The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. Final guidance represents the NOP’s current

thinking on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501-6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

### III. Electronic Access

Persons with access to Internet may obtain the final guidance at the NOP's website at <http://www.ams.usda.gov/nop>. Requests for hard copies of the guidance or instruction documents can be obtained by submitting a written request to the person listed in the ADDRESSES section of this Notice.

Authority: 7 U.S.C. 6501-6522.

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